

Wednesday, 3 March 1948

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDINGS IN CHAMBERS

On

Paper No. 1576. Application on behalf of the Defense for entry of an order nunc pro tunc admitting into evidence two maps, defense documents Nos. 1601-A and 1601-B, exhibits Nos. 2651 and 2652 for identification.

Paper No. 1581. Application on behalf of the Prosecution for leave to withdraw from the files of the Tribunal court exhibit No. 3572.

BEFORE:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth of
Australia.

Reported by:

Kapleau & Yelden
Court Reporters
IMTFE

Appearances:

For the Prosecution Section:

Colonel L. N. Smirnov.

Commander Charles T. Cole.

For the Defense Section:

Mr. Ben Bruce Blakeney.

For the Secretariat:

Mr. Edward H. Dell, Legal Adviser, IMTFC.

The proceeding was begun at 1605.

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THE PRESIDENT: This is an application by Mr. Blakeney, defense counsel, that two maps which he claims were used in evidence but which were tendered merely for identification should be now marked as exhibits and treated as part of the evidence. Is there any objection?

COLONEL SMIRNOV: Yes, sir. When the defense presented the affidavit of the witness YANO, Mitsui, we objected to the presentation in evidence of both books which were mentioned in his affidavit at page 22,991 of the transcript. One of these books, a book entitled "Halombair," exhibit 2652, marked for identification only, was written by an anonymous author -- it is not known where -- and it was published later on. Due only to this, this book can be received in evidence as an anonymous document which has no authenticity whatsoever. I refer to the affidavit of the witness, page 22,995 of the transcript.

As far as the second book is concerned the situation is not better. The second book entitled "History of Nomadic Life in Mongolia," exhibit 2651, marked for identification only, was written by a Chinese, Chang Mu by name (1805-1849). This was not

clear to the witness YANO, Mitsui himself, who didn't understand it, as may be seen from his affidavit, page 22,995 of the transcript. Besides, this map has a very curious peculiarity. The area of conflict is covered with an inscription and it is impossible to understand where the boundary lies. We translated the Japanese inscription on the map and called the attention of the Tribunal to the fact that the note written by the translator on the map begins with the words, "Though the map is not attached to the original, but for the reference of the readers I have compiled one outline map." In this way we see that there is no map at all in the Chinese original and the map was drawn up by the Japanese translator.

We object to the reception of both maps in evidence and believe that if the defense did not present those maps in due time, it probably can be explained by inadvertence or by the fact that the defense properly estimated the probative value of those maps. In our submission there are no grounds whatsoever for changing the usual procedure of the Tribunal as to the reception of evidence and there are no grounds whatsoever for continuing the defense phase in the phase of summation.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: Well, your Honor, I didn't come here expecting to argue the merits of admissibility of the maps. The situation was that the maps as excerpted from books were identified and thus made competent, if they were not so otherwise, by the testimony of the witness YANO. Through certain mechanical difficulties the maps were not ready at the time of his testimony. He was stood down for cross-examination after the maps should have been made ready. The books from which the maps were taken were offered for identification in the usual course. The maps having been photostated the witness was recalled some days later, at which time I arose and stated that the maps had now been distributed and therefore offered the witness, having simply overlooked the fact that the maps had not been offered but that the original book had merely been tendered. The witness was cross-examined on the assumption that those documents were part of his testimony and, of course, I am attempting to cure in this way an oversight which I think is explainable, but I make no great point of it anyway.

THE PRESIDENT: It would be a matter that the Court itself would have to determine in the absence of agreement. I will put the matter before all the Judges.

This is another application, an application on behalf of the prosecution for leave to withdraw from the files of the Tribunal court exhibit 3572. Application is made by Mr. Tavenner.

The document was obtained from the United States Navy Department, Washington, and the Navy Department has requested its return. There is no objection?

MR. BLAKENEY: I don't know, your Honor. The Clerk's office called me some minutes ago and asked, since I was to be here anyway, whether there was objection. I said I have none but I knew nothing about the matter. Might I suggest, however, that as has sometimes been done in the past the order be entered subject to any objection in a few days. I think there will not be any.

THE PRESIDENT: I make the order in the usual form and direct that it lie on the registry for ten days.

MR. BLAKENEY: Yes, that will give everyone a chance.

(Whereupon, at 1615, the proceedings were concluded.)

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